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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,638	11/24/2003	Nareak Douk	P1714	1187

28390 7590 05/27/2009  
MEDTRONIC VASCULAR, INC.  
IP LEGAL DEPARTMENT  
3576 UNOCAL PLACE  
SANTA ROSA, CA 95403

EXAMINER
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KOEHLER, CHRISTOPHER M

ART UNIT	PAPER NUMBER
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3726

NOTIFICATION DATE	DELIVERY MODE
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05/27/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rs.vasciplegal@medtronic.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/718,638	<b>Applicant(s)</b> DOUK ET AL.	
	<b>Examiner</b> Christopher M. Koehler	<b>Art Unit</b> 3726	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-21 is/are pending in the application.
- 4a) Of the above claim(s) 3,6,8,12-17 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,9-11 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4, 5 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kusleika et al. (US Patent No. 6,325,815) in view of Chouinard et al. (US 2002/0007210).

#### Claims 1 and 20:

Kusleika teaches a method for manufacturing a distal protection element (figure 1) for preventing emboli in a blood vessel from moving away from a treatment site during a vascular procedure (col. 4, lines 25-32), the method comprising braiding a plurality of filaments to form an enclosure (col. 3, line 63-col. 4, line 16); and forming the braided enclosure to have a first end region and a second end region (figure 1), each of the first and second end regions having a taper region (figure 1) and a neck region (60, 65) adapted for attachment to a guidewire (20, col. 3, lines 17-32). Kusleika does not explicitly teach reducing the thickness of the filaments forming the braided enclosure along at least a portion of the first end region.

Chouinard teaches a vascular device comprised of braided filaments wherein the braided filaments are reduced in diameter along at least a portion of a first end of the device (figure 17; paragraphs [0083] and [0084]). It would have been obvious to one of

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ordinary skill in the art at the time of the invention to have used the reducing teaching in Chouinard in the method of Kusleika in order to provide a smaller diameter section of the filament in a tortuous portion of the stent or in a region requiring greater flexibility (Chouinard, paragraph [0084]).

Claims 2 and 4:

Kusleika teaches heat treating the filaments of the braided distal protection element after the reducing step (col. 5, lines 4-10).

Claim 5:

Kusleika teaches that the protection element is a capture element (abstract).

Claims 18 and 19:

Kusleika teaches that the filaments comprise metal nitinol tubing wires (col. 4, lines 2-16).

3. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kusleika in view of Chouinard as applied to the claims above, and further in view of Heilman et al. (US Patent No. 4,080,706).

Claims 9-11:

Kusleika/Chouinard teach the structure above but do not explicitly teach the manner in which the filaments are reduced.

Heilman teaches the tapered reduction of an element of a vascular device wherein the taper is formed by electro-etching the portion of the element (col. 6, lines 1-36). It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the reducing teaching of Heilman into the method of

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Kusleika/Chouinard where they have been silent on the manner of reducing since etching is known in the art to be an effective way of forming tapers in elements of vascular devices. It should be further noted that the alternatively claimed methods of reducing the filament are known and merely functional equivalents with the etching of Heilman and therefore would also have been obvious to one of ordinary skill in the art.

### ***Response to Arguments***

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher M. Koehler whose telephone number is (571)272-3560. The examiner can normally be reached on Mon.-Fri. 7:30A-4:00P.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David P. Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. M. K./  
Examiner, Art Unit 3726

/DAVID P. BRYANT/  
Supervisory Patent Examiner, Art Unit 3726